ADUR & WORTHING
COUNCILS

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FREEDOM OF INFORMATION
AND
ENVIRONMENTAL INFORMATION REGULATIONS
POLICY

Document Control

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Purpose

This policy is designed to encourage good working practices in all areas of statutory obligations for requests for information. It applies to anyone working with information or information systems controlled by Adur and Worthing Councils including Officers, Members, partners, contractors and any other third parties.

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1. Training associated with this Policy

Compulsory online training on both FOI and EIR is provided to staff via Adur & Worthing E-Learning.

Additional workshops are organised by the Senior Information Governance Officer (SIGO) and the Request for Information Officers (IO). Various guidance is available to all staff via the Intranet.

Should anyone require further support, advice or guidance on any element outlined in this policy, they should speak with their line manager in the first instance.

2. Monitoring of and review date of policy

This Policy was consulted with the Unison and agreed by the Joint Officer Negotiating Group (JONG). It will be reviewed on an annual basis by the SIGO.

Compliance with the Policy and its associated protocols and procedures will be monitored through the Councils' SIGO and the management structure.

The overall responsibility for Information Governance and Security lies with the Senior Information Risk Officer (SIRO).

3. Non-compliance

The Policy is mandatory for all staff and appropriate sanctions may be taken for non-compliance. If you do not understand the implications of this policy or how it may apply to you, seek advice from your line manager in the first instance.

4. Introduction

The Freedom of Information Act 2000 (FOIA) provides rights of access to information held by public authorities and applies to central government, local government, and a wide range of other public bodies.

The Environmental Information Regulations 2004 (EIR) provide public access to any recorded environmental information held by public authorities.

There is a presumption in favour of disclosure to promote a transparent and accountable local government. Adur and Worthing Councils welcome the principles of openness and accountability as key components of its customer service and will ensure that they fully comply with the legislative provisions.

The EIR and the FOI Act do not give people access to their own personal data (information about themselves), which is governed by the Data Protection Act 2018 (DPA).

5. Responsibilities

The responsibility for managing and ensuring that FOI and EIR requests are dealt with, within the legal timeframe, rests with the Request for Information Officer (IO). On a day to day basis the SIGO will be responsible for managing the policy and working with the IO to ensure robust procedures are in place and are being complied with.

Senior Management

Are responsible for promoting and overseeing practices, which comply with this policy, and for ensuring that Managers, Officers and Members are trained to carry out their responsibilities.

SIGO and IO, or their appropriate deputy

Are responsible for providing advice and guidance on legal issues arising in relation to requests for information. This covers both the application of the public interest/prejudice or adverse affect tests in the case of a qualified exemption and undertaking internal reviews if an applicant is unhappy with the way a request has been resolved.

All Staff and Members

Are responsible for being aware of the requirements of the FOIA and EIR, and their obligations under these, and this Policy and associated Councils' internal processes and procedures.

6. Access to information

Access to information is predominantly governed by the FOIA, EIR and DPA, which provide access to information, subject to exemptions and exceptions. Any request for general information held by the Councils' will be treated as a Freedom of Information request in accordance with this policy and relevant implementation procedures, unless it is:

- a request by an individual for their personal data or other information rights or a request by a third party for disclosure of personal data, such requests will be dealt with under the DPA and the UK General Data Protection Regulation (UK GDPR) in accordance with the Councils' Data Protection Policy.
- a request for environmental information which will be dealt with under the EIR.

7. General Right of Access

Anyone can make a request for information. The right of access applies to any request for information which is made to the Councils, whether or not the FOIA or EIR are expressly mentioned. It applies to any recorded information in any form, which is held by the Councils at the time of the request. This includes information which is held by another body on behalf of the Councils. The request must:

- be in writing or in electronic form (requests can also be made via social media e.g. Facebook or Twitter). **However, the EIR requests can also be made verbally.**
- contain the name of the applicant and address for correspondence. **However, the EIR requests may be made under a pseudonym;** and
- contain a description of the information requested.

8. Publication Scheme

The Councils are committed to making as much information as possible available to the public, and will adopt and maintain a comprehensive Publication Scheme having regard to the public interest in accordance with its obligations under section 19 of the FOIA.

The Councils publish their Publication Scheme on the Councils' website and will provide members of the public with copies of the Publication Scheme free of charge upon request.

The Councils will keep its Publication Scheme under review and will amend as and when it is appropriate to do so.

9. Requests for Information and Timescales

The Council will normally respond to a request within 20 working days. Where a qualified exemption applies, the authority has to consider the balance of the public

interest before deciding whether or not to release the information. The FOIA allows a 'reasonable time' within which to fully respond.

In such cases, the IO will let the applicant know within the 20 working day period that a qualified exemption applies, and will give an estimate of the date by which it will make a decision.

10. Advice and Assistance

The Councils will make every effort to provide assistance to enable the applicant to submit a valid request. If they still fail to provide enough detail to enable the information to be identified and located, the obligation to comply with the request shall cease unless further information to enable the request to be determined is given.

11. Manner in which information is communicated

The Councils will, as far as is practicable, provide the information in the form requested by the applicant. However, the Councils reserve the right to provide the information in an alternative form where the requested arrangements are impracticable, or inappropriate.

12. Refusal of Request

Where the Councils refuse a request, they will notify the applicant that the request has been refused within 20 working days.

If the Councils refuse to disclose any or all of the information requested, they will specify the exemption relied on and state why the exemption was applied. Where the public interest and prejudice/adverse affect tests are applied, an explanation of how

these were decided will also be provided. The Councils may refuse to comply with a request where:

- the request is vexatious or repeated or manifestly unreasonable;
- the costs of location and retrieving exceed the specified or reasonable limit;
- the request is too general;
- the information is exempt from the requirement to confirm or deny;
- the information is exempt from the requirement to disclose information;
- it would not be in the public interest to disclose that the information is held; or
- it would not be in the public interest to disclose the information.

Where the Council refuses to respond to a request under the FOIA or EIR it will set out the reasons for the refusal. When notifying an applicant of a refusal, the Councils will give the applicant details of its complaints procedure, and will also provide information about the right to appeal to the Information Commissioner.

The Council may, however, accept an amended request as agreed with the requester. The Council will advise and assist with making a valid request, where appropriate.

13. Charges

The Councils may charge a fee for dealing with requests for information. Such fees will be calculated in accordance with the FOIA and EIR, and internal processes and procedures.

Where an estimated cost of complying with a request exceeds the limit specified in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, the Councils is not required to comply with the request.

The requester will be issued with a fees notice. The Council is not obliged to send the information until the fee is received. The time limit for complying with the request excludes the time spent waiting for the fee to be paid.

14. Recording requests

All requests for information will be logged on the Councils RFI system (except those that can be dealt with under existing service provision) for the purposes of:

- keeping appropriate documentation; and
- monitoring compliance with the FOIA, EIR and DPA; and
- identifying information which could be incorporated in the Publication Scheme; and
- enabling Officers dealing with requests to be able to identify previously provided information in order to avoid duplication of effort.

15. Exemptions from the Duty to Disclose

Appendix A sets out the Absolute Exemptions under the FOIA. If one of these exemptions applies, the Councils can refuse to supply the information, citing the exemption.

Appendix B sets out the Qualified Exemptions under the FOIA. In the event of one of these exemptions applying, the Councils must carry out a public interest test to ensure that the public interest in maintaining the exemption is not outweighed by the public interest in disclosing it.

Appendix C sets out Exceptions under EIR.

16. Duty to Confirm or Deny

Most exemptions or exceptions under the FOIA and EIR include a provision under which the Councils can refuse to either confirm or deny that they even hold the information requested. This applies if letting the applicant know that they hold the information would have the effect of disclosing information which the exemption is designed to protect.

17. Public Interest Test

If an exemption applies to information which has been requested, but it is not subject to one of the absolute exemptions, the Councils will still have to consider releasing the information, unless the balance of the public interest supports the maintenance of the exemption.

The public interest test provides that the Councils must release the information unless "in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information."

18. Complaints

All complaints regarding Councils' handling of FOI or EIR requests will be dealt with by the SIGO or an appropriate nominated Senior Officer. The Councils will make available the details of the FOI/EIR complaint procedure to applicants. Complaints will not be handled by persons who participated in the original decision.

Complaints and requests for review should be submitted by the applicants to the Senior Information Governance Officer within three (3) months of receipt of the initial response.

Where the Councils' procedure upholds an initial decision not to disclose information, the applicant will be advised of the right to appeal and the steps involved to take the matter to the Information Commissioner.

19. Related documents

This policy should be read in conjunction with other information governance, data protection and security policies and procedures adopted by the Councils.

20. Document History - Version Control

Version	Date	Notes/Reasons	Reviewers
1.0	31/01/12	First Draft	IS Project Team
1.1	15/02/12	Updates to several paragraphs and reformatting applied	IS Project Team
1.2	23/03/12	Updates to several paragraphs	IS Project Team
1.3	07/06/12	Updates to reference docs	IS Project Team
1.4	21/06/12	Updates as per some tracked changes	IS Project Team
2.0	05/11/19	Updated text, added EIR references, inserted links to external documents and guidance.	SIGO
2.0	02/12/19	Formatting, and EIR information added (incl. Appendix C).	SIGO
2.0	06/02/20	Formatting, ref to JONG added	SIGO
2.0	13/05/20	Agreed by JONG. Finalised for publishing.	SIGO

2.0	28/04/21	Refs to 'Information Officer' replaced with 'Request for Information Officer'; 'GDPR' replaced with 'UK GDPR'.	SIGO

21. Glossary of Key Terms

Term	**Explanation**
FOIA	Freedom of Information Act 2000
EIR	Environmental Information Regulations 2004
DPA	Data Protection Act 2018
SIGO	Senior Information Governance Officer
IO	Request for Information Officer

22. Reference Documents

Title	Where Held	Relevance
Freedom of Information Act 2000 and the Environmental Information Regulations 2004	www.legislation.gov.uk	Statutory
Various guidance from the Information Commissioner	www.ico.gov.uk	Guidance on the FOIA/EIR
Various FOI Policies from other local authorities	On the Councils' public website and the Intranet for staff	

APPENDIX A - FOI - ABSOLUTE EXCEPTIONS

Exceptions where the public interest test does not apply

Section 21 - Information accessible by other means

Section 23 - National Security – Information supplied by, or relating to, bodies dealing with security matters (a certificate signed by a Minister of the Crown is conclusive proof that the exemption is justified. There is a separate appeals mechanism against such certificates)

Section 32 - Court Records

Section 34 - Parliamentary Privilege – a certificate signed by the Speaker of the House, in respect of the House of Commons, or by the Clerk of the Parliament, in respect of the House of Lords is conclusive proof that the exemption is justified.

Section 36 - Effective Conduct of Public Affairs - so far as relating to information held by the House of Commons or the House of Lords

Section 40: Personal Information – where the applicant is the subject of the information. The applicant already has the right of 'subject access' under the Data Protection FOIA 1998; where the information concerns a third party and disclosure would breach one of the data protection principles

Section 41 - Information provided in Confidence

Section 44 - Prohibitions on disclosure – where a disclosure is prohibited by an enFOIAment or would constitute contempt of court.

APPENDIX B - FOI - QUALIFIED EXCEPTIONS

Exceptions where the prejudice and public interest tests apply

Section 22: Information Intended For Future Publication Exemption

Section 24: National security (other than information supplied by or relating to named security organisations, where the duty to consider disclosure in the public interest does not apply)

Section 26: Defence

Section 27: International relations

Section 28: Relations within the United Kingdom

Section 29: UK Economic Interests

Section 30: Investigations And Proceedings Conducted By Public Authorities

Section 31: Law Enforcement

Section 32: Court Records

Section 33: Audit Functions

Section 35: Formulation of government policy and Ministerial Communications

Section 36: Prejudice to effective conduct of public affairs (except information held by the House of Commons or the House of Lords)

Section 37: Communications with Her Majesty, the Royal Family or concerning honours

Section 38: Health And Safety

Section 39: Environmental Information – as this can be accessed through the Environmental Information Regulations

Section 40: Personal information relating to a third party access request

Section 42: Legal Professional Privilege

Section 43: Commercial Interests

Note:

Where a public authority considers that the public interest in withholding the information requested outweighs the public interest in releasing it, the authority must inform the applicant of its reasons, unless to do so would mean releasing the exempt information.

APPENDIX C - EIR - EXCEPTIONS

Regulation 12(4)(a): no information held

Regulation 12(4)(b): request is ‘manifestly unreasonable’

Regulation 12(4)(c): request is too general

Regulation 5(3):information is the personal data of the applicant

Regulations 12(3) and 13: information is the personal data of a person other than the applicant

Regulation 12(4)(d): unfinished documents

Regulation 12(4)(e): internal communications

Regulation 12(5)(a): international relations, defence, national security, public safety

Regulation 12(5)(b): the course of justice, fair trial or inquiry of a criminal or disciplinary nature

Regulation 12(5)(c): intellectual property rights

Regulation 12(5)(d): confidentiality of proceedings where confidentiality is provided by law

Regulation 12(5)(e): confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest

Regulation 12(5)(f): interests of the person who provided the information

Regulation 12(5)(g): protection of the environment to which the information relates